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FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34007]

Canadian National Railway Company–Corporate Family Transaction Exemption–Interest
in Detroit River Tunnel and Niagara River Bridge

Canadian National Railway Company (CNR) has filed a notice of exemption under 49 CFR 1180.2(d)(3), for what CNR describes as a corporate family transaction involving CNR's creation with the Canadian Pacific Railway Company (CPR) of a new partnership, CNCP Niagara-Windsor Partnership (NWP), to control certain rail assets currently controlled by CNCP Niagara-Detroit Partnership (N-D Partnership). The transaction is related to CNR's anticipated transfer of certain interests in the Detroit River Tunnel property (the Tunnel) to Borealis Infrastructure Trust Management Inc., sole trustee of the Borealis Transportation Infrastructure Trust (BTIT). The Tunnel and other rail assets were acquired jointly by CNR and CPR in 1984, and those assets acquired by CNR and CPR at that time were placed under the control of N-D Partnership, of which CNR and CPR each hold an undivided 50% interest.¹ CNR states that the corporate

¹ See Canadian National Railway Company and Canadian Pacific Limited-Acquisition-Interests of Consolidated Rail Corporation in Canada Southern Railway Company and Detroit River Tunnel Company, Finance Docket No. 30387 and Canadian National Railway and Canadian Pacific Limited-Application for Trackage Rights Over Consolidated Rail Corporation Trackage in Detroit, MI, Finance Docket No. 30387 (Sub-No. 1) (ICC served Sept. 4, 1984).

arrangements described in and purported to be covered by this notice are beyond the scope of the Board's jurisdiction.²

The transaction was scheduled to be consummated on or shortly after March 6, 2001, the effective date of the exemption (7 days after the exemption was filed).³

The purpose of the transaction is to allow CNR and CPR to dissolve the N-D Partnership, permit distribution of the N-D Partnership Assets to CNR and CPR, permit CNR's transfer of its 50% interest in the Tunnel to BTIT, and then to allow CNR and CPR to create NWP.⁴

CNR has filed its notice of exemption under 49 CFR 1180.2(d)(3) based on its assertion that the proposed reorganization is exempt as one within the CNR corporate

² CNR simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. That motion will be addressed by the Board in a separate decision.

³ This transaction is related to the following simultaneously filed verified notices of exemption: STB Finance Docket No. 33984, Borealis Infrastructure Trust Management Inc., Sole Trustee of the Borealis Transportation Infrastructure Trust–Acquisition Exemption–Detroit River Tunnel Company; STB Finance Docket No. 34005, Canadian Pacific Railway Company–Corporate Family Transaction Exemption–Interests in Detroit River Tunnel and Niagara River Bridge; STB Finance Docket No. 34006, Canadian Pacific Railway Company–Trackage Rights Exemption–Detroit River Tunnel Company; and STB Finance Docket No. 34001, Canadian National Railway Company–Trackage Rights Exemption–Detroit River Tunnel Company.

⁴ The properties that will be held by NWP include, as relevant here, the Canada Southern Railway Company (CSR), which is owned by N-D Partnership, whose lines are located entirely in Canada. CSR, in turn, controls the Niagara River Bridge Company, whose line extends across the U.S.-Canada border at Niagara Falls, NY.

family.⁵ As described, the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family, but whether CNR and its affiliates qualify for the corporate family transaction class exemption and whether they need that exemption or some other Board approval (or exemption) for the proposed transaction are matters that will be addressed by the Board in its consideration of CNR's motion to dismiss.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to this exemption, any United States railroad employees, affected by the transaction will be protected by the conditions imposed in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34007, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a

⁵ Unredacted versions of the draft Dissolution Agreement, the draft Distribution Agreement, and the draft Partnership Agreement, each relating to the dissolution of the N-D Partnership, and the creation of the NWP between CNR and CPR, as required by 49 CFR 1180.6(a)(7)(ii), were filed under seal. A motion for protective order was filed on February 27, 2001. That motion was granted and a protective order in this proceeding was served on March 14, 2001.

copy of each pleading must be served on Paul A. Cunningham, HARKINS
CUNNINGHAM, 801 Pennsylvania Ave., N.W., Washington, DC 20004-2664.

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“WWW.STB.DOT.GOV.”

Decided: March 14, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary